North Central Regional Transit District
Board Meeting
Friday, June 3, 2011

1. CALL TO ORDER:

A regular monthly meeting of the North Central Regional Transit District Board was called to order on the above date by Chair Rosemary Romero at 9:00 a.m. at Buffalo Thunder Resort, Barranca Room, Pojoaque, New Mexico.

a. Pledge of Allegiance

b. Moment of Silence

c. Roll Call

Roll call indicated the presence of a quorum as follows:

Members Present:	Elected Members	Alternate Designees
Los Alamos County	[T] Councilor Michael Wismer	
Taos County		Mr. Jacob Caldwell
Santa Fé County	[T] Commissioner Robert Anaya	Ms. Penny Ellis-Green
Pojoaque Pueblo	Mr. Tim Vigil	
San Ildefonso Pueblo	[T] Councilman Raymond Martínez	
Tesuque Pueblo	Governor Charles Dorame	
City of Santa Fé	Councilor Rosemary Romero	Ms. Judith Amer

Members Absent:	**Elected Members**	**Alternate Designees**
Los Alamos County		Ms. Anne Laurent
Rio Arriba County	Commissioner Barney Trujillo	Mr. Tomás Campos
Taos County	Commissioner Dan Barrone	
Pojoaque Pueblo		Councilman Cameron Martínez
San Ildefonso Pueblo		Ms. Sandra Maes
Ohkay Owingeh	1st Lt. Gov. Virgil Cata	Ms. Kateri Keevama
Santa Clara Pueblo	Sheriff John Shije	Ms. Mary Lou Quintana
Tesuque Pueblo		Former Gov Milton Herrera
City of Española	Councilor Robert Seeds	Councilor Helen Kane-Salazar

Staff Members Present
Mr. Jack Valencia, Transit Project Manager
Ms. Cynthia Halfar, Executive Assistant
Ms. Kelly Muniz, Financial Director
Mr. Peter Dwyer, Counsel for NCRTD [arriving later]
Ms. Annette Velarde, Public Information Officer
Mr. Tony Mortillaro, Interim Executive Director

Others Present
Mr. Andrew Jandáček, Santa Fé County
Mr. Greg White, NMDOT
Mr. Mike Kelly, Santa Fé Trails
Mr. Al Lama, Deputy AG
Mr. Chris Barela, Santa Fé County
Mr. Bob Saar
Mr. Colin Messer
Mr. Jon Bulthuis, Santa Fé Trails

d. Introductions

Those present introduced themselves.

e. Approval of Agenda

Mr. Valencia said the AG wouldn't be present until 10:00. There were no other changes to the agenda.

Gov. Dorame moved to approve the agenda as amended. Mr. Vigil seconded the motion and it passed by unanimous voice vote.

f. Approval of Board Meeting Minutes - May 6 and May 20, 2011

Commissioner Anaya moved to approve the minutes of May 6, 2011 as presented. Chair Romero seconded the motion and it passed by unanimous voice vote.

Commissioner Anaya moved to approve the minutes of May 20, 2011 as presented. Chair Romero seconded the motion and it passed by unanimous voice vote.

2. PRESENTATIONS

A. The New Mexico Open Meetings Act and the Inspection of Public Records Act. Presented by Al Lama, New Mexico Chief Deputy Attorney General

This was tabled until later in the meeting under Approval of Agenda.

3. ACTION ITEMS FOR DISCUSSION/APPROVAL

B. Approval of Edgewood Route

Mr. Valencia referred to the minutes of the May 17 RPA for the Edgewood route. The RPA authorized $22,000 for reviving this route. A driver meeting the criteria for the insurance policy would need to be recruited for this route.

Mr. Mortillaro said this modification was reflected in the Santa Fé GRT allocation and RTD allocation. It would be on the RTD side of the ledger when the Board reviews the budget.

Commissioner Anaya appreciated a favorable consideration for it.

Chair Romero noted there was a lot of discussion at the RPA. She invited public comment.

John from the public said he deeply appreciated the Board's consideration for commitment to regional transit services.

There were no other comments from the public.

ACTION:

Commissioner Anaya moved to approve the Edgewood Route. Gov. Dorame seconded the motion and it was approved by unanimous roll call vote with Taos County, Santa Fé County, Pojoaque Pueblo, San Ildefonso Pueblo, Tesuque Pueblo and City of Santa Fé voting in favor and none voting against.

C. Approval of Resolution 2011-04 - Authorizing a Grant Application for 5310, 5311 and 5316 Funding

Mr. Mortillaro reminded the Board that each year, the staff brings forward a resolution to authorize an application for 5310, 5311 and 5316 federal funds to obtain Board approval for it.

Commissioner Anaya moved to approve Resolution 2011-04 authorizing a grant application for 5310, 5311 and 5316 federal funds. Governor Dorame seconded the motion and it passed by unanimous roll call vote with Taos County, Santa Fé County, Pojoaque Pueblo, San Ildefonso Pueblo, Tesuque Pueblo and City of Santa Fé voting in favor and none voting against.

D. Approval of Final Budget for FY 2012

Chair Romero said Mr. Mortillaro and Ms. Muniz worked very hard to get this budget done. Ms. Muniz also had to deal with the audit during the same time.

Mr. Mortillaro commented that on May 20 they presented the draft budget and received input from the Board. The Board approved a motion that called for reducing marketing to $50,000, reducing travel to the minimum required, reviewing contracts for possible reductions and reducing administrative costs. Based on that, staff revised the budget with these challenges.

The marketing budget was changed to $50,000. Staff will bring the marketing plan tied to that budget in the future. Travel and training was reduced to 21% less than in the prior year. They kept travel for those activities that were absolutely minimums. It would allow staff to be exposed to new concepts and state of the art operations and appropriate training.

Contractual services included costs related to move to the new facility. They created an Administration Contingency line item with a budget of $30,000 to include relocation, a board retreat, and other unanticipated expenses for the building move. Then they created an architect line item related to phase 2 for the maintenance building. Once the board chooses to go forward will those projects the budgeted monies would be utilized and otherwise would just sit there.

Mr. Mortillaro reviewed all administration expenditures and they would maximize the use of federal dollars. One big change was the phase 2 maintenance facility which was relieved from the capital expenditure side. He believed that project needed further deliberation with staff. It was not just building a new building but also operating and staffing it and that had recurring expenses and should be looked at in light of the Long Term Plan (LTP). He didn't want the NCRTD down the road having to make hasty

decisions about staffing that building. So it was removed for the time being and those funds were placed in the reserve. They could be used for that in the future.

Commissioner Anaya appreciated the staff work and what they did to revisit those aspects. The Board could go back and review them later but given current climate staff did a good job.

Mr. Mortillaro summarized that administrative costs were reduced by 6.2%, operations increased by 0.6% and capital expense increased 4% and those were driven by projects that were previously approved.

The overall budget was reduced and only 0.5% over last year or less than $50,000 in spite of rising costs of gasoline, etc. So it was very flat and was sufficient to provide the services of the district and adding a new route. So it was on target for FY 12. The big changes dealt with costs put in administration that should have been in operations. They made sure those costs were allocated appropriately.

Ms. Muniz said they also added actual expenses as of May 22 in this report.

Councilor Wismer echoed Commissioner Anaya's comments and thanked Mr. Mortillaro and staff for a good solid scrub.

He asked where the expenses for operations at the new transit center would appear in the budget.

Mr. Mortillaro said utility and other operational costs were estimated for November through the end of the fiscal year (8 months). It was built in to the utility and telephone line items.

Mr. Caldwell asked if the salary compensation plan would come back to the Board for approval later.

Mr. Mortillaro agreed. He wanted the Board to approve that plan with discussion on how the 3% would be distributed. Under the policy, employees were eligible for 0-3% with the performance review at their anniversary. His question was whether the Board wanted to stay on the step system or just offer raises based on the performance review. That discussion would be in July or August after the Finance Committee discussed it and made recommendations.

Mr. Caldwell noticed a project for $10,000 and asked if that was a contingency or something else.

Mr. Mortillaro explained it was one issue he would that he would bring forward for board discussion in the near future. When they went out to get bids on the building there were cuts that had to be made and some of the add alternates were mandatory. E.g. the district required that the RTD put in the road. It was something they would have to do. He went to review the alternate add items with the construction manager. Hopefully they could get an allocation for those improvements. The $10,000 was not for change orders but for miscellaneous items they wouldn't know about until they got into the building.

There was no money in the budget for change orders or add alternates. There was money in reserves for that purpose but he wanted a separate discussion from the budget for that.

Mr. Caldwell noted that this budget reallocated certain line items from administration to operations. He

asked if the difference had been placed in reserves.

Mr. Mortillaro said it was because they wanted to match projected revenues with projected expenses.

Mr. Caldwell said when they came back to that they would need a running tally of the reserve account.

Mr. Mortillaro agreed to do that. Reserves now were over and above the Board's required 25% contingency. They set that benchmark and had decided that anything over that amount were available. They didn't want to go below that reserve requirement if possible. One time expenses would be okay. They needed to be sure of new revenues to support the recurring expenses.

Mr. Caldwell agreed. This was an important time in NCRTD history. With the Executive Director turnover also it was important to establish a really good backbone for the organization. It was too easy to think about no increase in services. In the future the Board would want to consider that.

Mr. Mortillaro reminded them that on May 20 the Board asked that staff review this budget with the Finance Committee Chair and he did that this week.

Gov. Dorame thought about all this money coming in from the feds and would be interested in knowing what our legislative plan in DC was. Mr. Valencia and Ms. Lucero and he sometimes ran into each other on the hill to try to get support from the feds. He would have 3 more visits to DC before the end of the year.

Chair Romero knew they did lobby together and this budget was based on their success there. That was why she was cautious about reductions in travel.

Gov. Dorame said his trips didn't impact the NCRTD budget because he lobbied for his tribe. But when he was there he would team up with NCRTD.

Mr. Mortillaro appreciated those comments. It highlighted how important those trips to DC were. He retained in the budget some trips to DC for conferences at which time lobbying efforts could be made.

Mr. Valencia reminded the Board that the reauthorization of the transportation act was going on now and they had a continuing resolution. It was normally a six year bill and there was some consideration now of a two-year bill. They had been working with Senator Udall and had some impact on tribal authorization to make additional tribal funding available. Maybe next meeting we could have a resolution of support for that.

There were no comments from the public.

Mr. Caldwell moved to approve the budget for FY 12 as presented. Gov. Dorame seconded the motion and it passed by unanimous voice vote.

E. Approval of Resolution 2011-05: FY 2012 Final budget

Governor Dorame moved to approve the Resolution on Final Budget as presented. Mr. Vigil

seconded the motion and it passed by unanimous roll call vote with Taos County, Santa Fé County, Pojoaque Pueblo, San Ildefonso Pueblo, Tesuque Pueblo and the City of Santa Fé voting in favor and none voting against.

F. Proclamation to "Dump the Pump"

Ms. Velarde explained that the slogan was from the American Transportation Association - Dump the Pump was a market awareness of how much cost savings were achieved with public transportation. It was a national marketing campaign and this would allow NCRTD to ride the tail of what was done nationally on TV and radio. The day was June 16th. She wanted to direct our radio ads with that message and hold an event that day.

Chair Romero read the resolution. (June 16th was also Chair Romero's birthday).

Mr. Dwyer arrived during the reading of the resolution.

Mr. Caldwell moved to approve the Dump the Pump Resolution as presented. Ms. Ellis-Green seconded the motion and it passed by unanimous voice vote.

Gov. Dorame explained that Tesuque Pueblo owned a convenience store that had pumps but he looked at it from an environmental point of view.

The Board took a five-minute break at this point.

2. PRESENTATIONS

A. The New Mexico Open Meetings Act and the Inspection of Public Records Act. Presented by Al Lama, New Mexico Chief Deputy Attorney General

Mr. Dwyer introduced Mr. Al Lama who had been in the public sector for 22 years. There were concerns and lots of public comment about transparency last month and Mr. Lama was here to address them.

Ms. Amer arrived during this presentation.

Mr. Lama said a big part of his work was to educate public bodies and officials who served as officers and employees of the state. The more everyone knew about the act and their responsibilities under it, the more they could avoid an enforcement problem.

These laws were designed to give the public an opportunity to know about and participate in what was being done in the decision making process. That was the essence of a functioning democracy.

It was not the most functional way to make decisions because it required bodies to listen to their

constituency. Fortunately they didn't live in a totalitarian state. Open Meetings and IPRA were the vehicles to use in that regard.

He distributed the most recent version of the compliance guide and said they would issue a supplement shortly. The guide was available on the website in pdf form as Www.nmag.gov and you could print out copies as you would like. It included up to the 2011 legislative session. All actions must be done in open session although there were a few exceptions to this.

In his presentation he explained meeting notice requirements and the necessity for the Board to adopt reasonable notice requirements annually for regular meetings, special meetings and emergency meetings. Any subcommittee that could set policy was also subject to this requirement. He explained that if a contract was going to be recommended to the public body it was a form of policy making so must be noticed. But if the subcommittee had no authority but just to gather data, it probably was not functioning as a policy making body. He urged the Board to make sure it was not delegating authority to the subcommittee or else provide notice. He further explained that a recommendation usually meant they eliminated other choices and that was the distinction. The best thing to do was to treat them as subject to the Open Meetings Act.

Mr. Caldwell asked about discussions on contract awards or negotiations.

Mr. Lama said dealing with competitive bids could be done in closed session but he would say more about it later.

Regarding telephone conferencing, Mr. Lama said it must be authorized by a separate rule for those who otherwise cannot attend. Simply as a matter of convenience was not an appropriate reason. It required equipment that the phoning member was hearable by those present and that those present could be heard by the person on the phone.

They also must participate in as much of the meeting as was effective for the meeting. The individual must participate for the whole discussion, not just the vote. They need not participate in the whole meeting unless their participation was necessary for a quorum.

Regarding the agenda, no action could be taken on something not on the agenda.

Emergency meetings must truly be emergencies. In 22 years he had seen only three times there were truly emergencies.

Minutes must be taken. They were the official record of the things that the Board did. It must be complete and accurate. It was a good idea to have a record of the decision making. A lawyer would tell you that you were much better served when the action was recorded.

Mr. Valencia asked if a copy of a recording be reasonable minutes and probably more accurate.

Mr. Lama said probably not unless the body followed a process and a script for every meeting on the details. A recording might not indicate who voted no if it was a voice vote. It was better to have a written set of minutes. You have to record the place and time of the meeting. It must say what proposals were

considered, record the decisions that were made, how the vote was taken and how each person voted. Secret ballots were not allowed because every action taken must record how each person voted.

The minutes constitute a public record and must be available in ten business days in draft form and the must be considered at the next meeting and acted upon. On day 11 if someone came and asked for a draft set they must be available then. So the contents were subject to change.

Section H of the Act gave the exceptions.

Section H.1 was an exemption for license revocations. This and all of these exceptions were all interpreted narrowly by both NMAG and courts.

A hearing on any evidence presented or rebutted must be done in open and final action must be in open meeting and action of each member identified.

Section H.2 was for limited personnel matters. It didn't include general discussions of salaries of staff nor did it pertain to members of the elected body. A Council in Las Cruces closed the meeting to deal with ethics allegations on one of the councilors but that councilor was not an employee.

Section H.3 - deliberations by a public body in adjudicatory proceeding but final action must be open.

Section H.4 was only for school boards to consider identifiable information about individual student.

Section H.5 was for bargaining negotiations - not general discussion on collective bargaining.

Section H.6 concerned the purchases of sole source over $6,000 or sealed competitive bids. They were confidential up until the time of award but action must be in open session.

Section H.7 was for threatened or pending litigation. This was not for conversations with your lawyer but for litigation threats or ongoing. The attorney must be present or on the phone or have a letter to the Board. Pending litigation didn't' have to identify the specifics.

Ms. Amer asked about a threat coming from within the body itself.

Mr. Lama said it still could be done. It could be active litigation the body would pursue.

Section H.8 dealt with the acquisition of property or water rights. To not be placed at a competitive disadvantage or prohibit bargaining, such matters could be considered in closed session. But the final action had to be done in open session.

Closed Meetings could be in two ways - have an executive session as part of an open meeting and at that point require a roll call vote on a motion that must also state the topic to be discussed.

When coming out, for the record it was important that you indicate only the items specified for discussion in the motion were discussed. No roll call vote or even a motion was needed to go back into

open session. When the body reconvened the chair stated the time and that fact that no actions were taken in closed session.

Who was allowed to be present in closed session was up to the body. Some bodies had the Executive Director in and some kick everyone out. It was across the board.

The second way was to have a closed only meeting. The intent would be to discuss an item and then take action at the next open meeting. That still required a public notice and an agenda to state the item to be discussed and have to state the law provision for the closed meeting and the subject to be discussed.

Then at the next meeting in the meeting minutes it would reflect that only the items authorized were discussed in the executive sessions. Most times public bodies didn't use this method because they normally had to take some action afterward.

Inspection of Public Records Act (IPRA)

The act provided for the right of the public to inspect and copy public records. Significant revisions were made in 1978 and incorporated the definitions into the law. It pretty much included everything that was maintained and compiled and was part of public business. Personal records were not subject to public inspection.

This was a broad definition despite their condition. It included emails and texts. So if it related to public business and was on a public computer or were at a home and the person engaged in business discussions from home, those were subject to public inspection. A decision of AG in Rio Arriba County was ratified by the court. If you had a personal computer and it didn't interface with work, it was not subject.

He cautioned to be careful in engaging in serial discussions with folks because it might be in violation of OMA. It might lead to quorum issues (as in "rolling quorum."). E-mail could easily be transmitted - easier than a phone call but it also had a record.

Emails for purpose of the inspection of public records act were not a permanent record. So emails were not required to be retained. A letter sent with an email should be retained but not the message of the email. A record was something that was permanent in nature. But if it was retained, it was subject.

The Board could establish a policy on retention and the IPRA did not say what length of retention was required. The Board should make a distinction between a transitory email and something that was a permanent record. A scanned letter was a permanent record. The email was a transitory communication and not a permanent record. But under IPRA, if you keep the email it would be subject to inspection. He suggested looking at the rule on archives and records for guidance.

Mr. Dwyer said he gave most of his legal advice by email.

Mr. Caldwell said what he told his employees was just to know that anything they send by email could become a public record.

Mr. Dwyer was troubled that an email could be forwarded to other people.

Mr. Lama agreed this was not the clearest but the archives and records rule was important to review. He clarified that there was no jurisdiction over tribal. However, if the tribe interfaced with the state they wouldn't be able to claim sovereignty.

He also clarified that the confidentiality boilerplate often put in emails did not exempt that email from IPRA.

Regarding management of the requests, IPRA required that a custodian be designated and duties outlined for responding to requests a 15 day response in providing the record and a 3 day response if they cannot provide the record. There were exceptions but they were interpreted narrowly. If there was a record of exempt information and non-exempt information, the custodian must redact the exempt parts.

Failure to provide by IPRA didn't have criminal penalties but damages could be awarded to the requestor. It could be $30-60,000 in attorney charges for failure to comply with IPRA.

IPRA also included the right to make copies. The Board could set a reasonable fee for copies but must make that schedule noticed. If they bring in their own copy machine, you could not charge them.

In response to several questions about draft documents, Mr. Lama made it clear that they, too, were subject to IPRA, even if the Board did not decide to consider the document. There was nothing in IPRA that dealt with final version or approval.

Mr. Caldwell thought no one here could really tell when an executive-privileged document crossed that line.

Mr. Lama said there was a pending case right now that he hoped would further define executive privilege related to public inspection. They were operating a little in the dark with these considerations.

He cautioned that if the information you were seeking to withhold was expenditures, the courts would turn it down, no matter what stage it was in. But if it was a discussion that could disadvantage you in the public interest, you could argue it as public right to protection from disclosure.

Chair Romero thanked Mr. Lama for the very helpful information.

4. DISCUSSION ITEMS

G. Update of the Jim West Regional Transit Center

Mr. Mortillaro reported meeting with Mr. Davenport yesterday and some of the discussion related to board decisions that were in excess of $200,000. As they worked on the parking lot the clay soils used in the base course from the front parking lot being moved from front to back and might result in a change

order there.

Mr. Valencia said he would bring some of this information to the Finance Committee. They were supposedly on schedule and hoping for a good summer of activity.

H. Executive Report for May 2011

Chair Romero said the report was in the packet. Having spent time with staff, she was impressed with the work that had been done.

I. NCRTD Rider ship Report for April 2011

Chair Romero said the report was emailed to all Board members.

J. Budget & Expenditure Report and Status of the FY 2010 Audit

Ms. Muniz presented the reports. She said they were right on track with eleven of twelve months in this report (92% of the year). She was now working on budget adjustment requests (BAR).

Mr. Caldwell asked if the Board had a policy about adjustments.

Ms. Muniz said she had been told that as long as she didn't cross over from administration to operations or vice versa, that she could make the adjustment requests.

Mr. Mortillaro said that would be addressed by Finance.

Mr. Caldwell thought they needed some kind of report on it.

Chair Romero said the Finance Committee would look at the policies and advise the Board if changes were needed.

Ms. Muniz reported next on the audit status.

She said they were closing the 2010 books if she could get them reconciled by July 31st but the public information requests did put her behind. She was now trying to catch up.

Gov. Dorame asked about outreach to other tribal entities.

Mr. Valencia said there was no formal outreach except to members.

Chair Romero said lots of work was done in the past but maybe the tribal subcommittee could take it on. There might be something the RTD could do for other tribes.

5. CLOSED SESSION

Pursuant to NMSA 1978, § 10-15-1.H(2) for the purposes of discussing limited personnel matters

Mr. Vigil moved to go into closed executive session pursuant to NMSA 1978, § 10-15-1.H(2) for the purpose of discussing limited personnel matters. Mr. Caldwell seconded the motion and it passed by unanimous roll call vote with Los Alamos County, Taos County, Santa Fé County, Pojoaque Pueblo, San Ildefonso Pueblo, Tesuque Pueblo and the City of Santa Fé voting in favor and none voting against.

The Board went into executive session at 11:50 a.m.

At 12:41 p.m. the Board returned to open session. Chair Romero announced to the public that during the executive session no actions were taken and the only matters discussed were limited personnel matters pursuant to NMSA 1978 § 10-15-1.H(2).

6. MATTERS FROM THE BOARD

There were no matter from the Board.

7. MISCELLANEOUS

There were no miscellaneous matters to be considered.

8. ADJOURN Next Board Meeting - July 1, 2011 at 9:00 AM

The meeting was adjourned at 12:45 p.m.

Approved by:

Rosemary Romero

Rosemary Romero, Chair

Attest:

Michael Wismer, Secretary

Submitted by:

Carl Boaz, Stenographer